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July 3, 2014

**VIA HAND DELIVERY AND E-MAIL**

Federal Election Commission  
Office of Complaint Examination and Legal Administration  
Attn: Kim Collins, Paralegal  
999 E Street, NW  
Washington, DC 20436  
[kcollins@fec.gov](mailto:kcollins@fec.gov)

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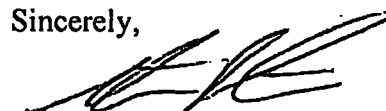
Re: **MUR 6823** – Mississippi Conservatives and Brian Perry, in his capacity as  
Treasurer of Mississippi Conservatives

Dear Ms. Collins:

Please accept the following Response filed on behalf of Mississippi Conservatives and Mr. Brian Perry (in his capacity as Treasurer of Mississippi Conservatives) with respect to MUR 6823 – the Complaint originally submitted to the Federal Election Commission (“FEC” or the “Commission”) on May 15, 2014 (and supplemented on May 19, 2014) by the Tea Party Patriots Citizens Fund and Ms. Jenny Beth Martin, its Chairman. For the reasons set forth in the Response, the Named Parties do hereby request that the Commission either dismiss MUR 6823 in its entirety or, alternatively, make an affirmative determination that there is “no reason to believe” any violations have occurred in connection with the present matter.

Thank you in advance for your time and consideration of this request. Should the FEC have any questions regarding the Response or require additional information concerning the arguments or information presented therein, please do not hesitate to contact me by phone or e-mail.

Sincerely,



Stefan C. Passantino  
Designated Counsel for Mississippi  
Conservatives and Mr. Brian Perry, in his  
capacity as Treasurer of Mississippi  
Conservatives

*Before the*  
**FEDERAL ELECTION COMMISSION**

In the matter of:

Mississippi Conservatives; and Brian  
Perry, in His Official Capacity as  
Treasurer of Mississippi Conservatives

MUR No. 6823

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**RESPONSE OF MISSISSIPPI CONSERVATIVES AND BRIAN PERRY, IN  
HIS CAPACITY AS TREASURER OF MISSISSIPPI CONSERVATIVES,  
TO THE COMPLAINT OF TEA PARTY PATRIOTS CITIZENS FUND  
AND MS. JENNY BETH MARTIN IN MUR NO. 6823**

\_\_\_\_\_  
**July 3, 2014**  
\_\_\_\_\_

**STEFAN C. PASSANTINO**  
**MCKENNA LONG & ALDRIDGE LLP**  
*Designated Counsel for Mississippi  
Conservatives and Mr. Brian Perry, in His  
Official Capacity as Treasurer of  
Mississippi Conservatives*

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*Before the*  
**FEDERAL ELECTION COMMISSION**

In the matter of:

Mississippi Conservatives; and Mr. Brian Perry,  
in His Official Capacity as Treasurer of  
Mississippi Conservatives

MUR No. 6823

**RESPONSE OF MISSISSIPPI CONSERVATIVES AND MR. BRIAN PERRY, IN HIS  
OFFICIAL CAPACITY AS TREASURER OF MISSISSIPPI CONSERVATIVES, TO  
THE COMPLAINT OF TEA PARTY PATRIOTS CITIZENS FUND AND  
MS. JENNY BETH MARTIN**

The following response ("Response") is submitted on behalf of Mississippi Conservatives ("MC") and Mr. Brian Perry, in his official capacity as Treasurer of Mississippi Conservatives (collectively, "Respondents" or the "Named Parties") with respect to the original and supplemental complaints<sup>1</sup> (MUR No. 6823; the "Complaints") filed by the Tea Party Patriots Citizens Fund ("TPPCF") and its Chairman, Ms. Jenny Beth Martin (collectively, the "Complainants"). As discussed in further detail within this Response, the Complaints authored by TPPCF and Ms. Martin against the Named Parties have no basis in either law or fact. Rather, they amount to nothing more than a conveniently-timed, politically-motivated attack, which was designed solely to drain the time and resources of the Named Parties, and to generate negative media coverage of MC in the weeks leading up to Mississippi Republican primary election. Based wholly on circumstantial evidence and unfounded speculation, the Complainant accuses Respondents of violating the Federal Election Campaign Act of 1971 (the "Act") in a "knowing"

<sup>1</sup> Complainants TPPCF and Ms. Jenny Beth Martin submitted an original Complaint against MC and Mr. Perry to the Federal Election Commission on May 15, 2014. Four days subsequent to that submission, on May 19, 2014, Complainants filed with the Commission a "Supplement" to the primary Complaint. This Response seeks to rebut the baseless allegations made in both the original and supplemental Complaints tendered by TPPCF and Ms. Martin.

and "willful" manner, and asks the Federal Election Commission ("FEC" or the "Commission") to investigate and pursue enforcement action against the Named Parties. Given the baseless nature of the instant Complaints, the Commission should reject Complainant's request and move to dismiss the present matter under review against Respondents.

**I. Introduction**

Respondent MC is an independent expenditure-only federal political committee registered with the Commission, which was established primarily to support proven conservative candidates seeking election to federal office representing the State of Mississippi. In the race for the Republican Party's nomination for the 2014 Mississippi U.S. Senate race, MC independently supported six-term U.S. Senator Thad Cochran against numerous opponents, including Mississippi State Senator Chris McDaniel. Complainant TPPCF, unsurprisingly, is a rival independent expenditure-only federal political committee that endorsed State Senator McDaniel, Senator Cochran's chief opponent during the Republican primary. In the midst of a heated battle for the Republican nomination and less than three weeks before the June 3, 2014 primary election, Complainants filed the present Complaints with the Commission alleging that the Named Parties "deliberately, knowingly and willfully" violated various provisions of the Act and its associated regulations by: accepting an "illegal contribution" from a federally chartered depository institution by receiving an "unsecured, uncollateralized 'loan'" from Trustmark National Bank; "conscious[ly] and deliberate[ly]" failing to disclose the existence of the certificate of deposit collateralizing the bank loan at issue; "conscious[ly] and deliberate[ly]" hiding the identity of the source/owner of the certificate of deposit at issue; "deliberately fil[ing] four false FEC reports and fail[ing] to file accurate FEC report[s]"; and "hatching and implementing ... [an] unlawful scheme" to commit violations of federal campaign finance law.

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(Original Complaint, pg. 3-4; Supplemental Complaint, pg. 2 and 7-9). From the timing and politically-charged language of the Complainants' submissions, the utter lack of substantiation for their allegations, and the degree to which the Complaints were actively promoted in the news media<sup>2</sup> by TPPCF and other individuals supporting State Senator McDaniels, one can only conclude that this action was filed as a political ploy designed to embarrass MC and others supporting Senator Cochran in the weeks before the primary rather than as a means through which to redress actual violations of the Act.

Even a cursory review of Complainants' allegations compels one to reach the conclusion that the Complaints are full of politically-motivated hyperbole and are wholly without merit. Their contents assert that the Named Parties "acted in concert" with Trustmark National Bank ("TNB") and its President, Mr. Harry Walker, to "deliberately, knowingly, and willfully" violate the Act and the regulations of the FEC. (Original Complaint, pg. 3). Specifically, the Complaint contains four separate accusations of note: (1) that MC accepted an improper contribution from TNB by receiving an unsecured and uncollateralized "loan" from the financial institution; (2) that MC failed to properly disclose the collateral securing its "loan" from TNB and the identity of the individual providing such collateral; (3) that MC deliberately filed false and inaccurate FEC disclosure reports in order to hide the nature of the "loan" agreement entered into with TNB; and (4) that MC deliberately, knowingly and willfully conspired to hatch and implement an unlawful scheme to violate federal campaign finance law and FEC regulations. (Original Complaint, pg. 3-4; Supplemental Complaint, pg. 2 and 7-9). These claims, however, are based entirely on unfounded assumptions, incomplete circumstantial evidence, and erroneous interpretations of law. As such, there is no compelling justification for the Complainants'

<sup>2</sup> An example of the Complainants' media promotion of their claims against the Named Parties is attached hereto as EXHIBIT #1.

assertions or reasonable foundation for asking the Commission to pursue an investigation against Respondents.

As is demonstrated fully below, the claims advanced by the Complainants against the Named Parties are fundamentally false. At no time since the establishment of MC has the committee knowingly or willfully failed to meet its disclosure or reporting obligations with the FEC, nor have Respondents taken any action independently or in concert with others to wrongfully obscure information associated with the TNB loan or the collateral securing it. Likewise, at no time since the establishment of MC have Respondents accepted political contributions from TNB or any other federally-chartered financial institution, nor has MC received improper loan proceeds from any financial institution in a manner that would qualify as a contribution under the Act. To these points, the Named Parties have taken all relevant and necessary precautions to ensure that the loan received by MC complied with and was disclosed in accordance with the requirements of the Act, FEC regulations, and relevant Commission advisory opinions. As such, any assertions that MC failed to meet its campaign finance reporting obligations, accepted improper contributions, or sought to avoid disclosing information associated with committee loans is altogether inaccurate. Consequently, there is no foundation upon which to initiate an investigation of the Named Parties and their activities, nor is there any reason to conclude that the Act, its implementing regulations, or any other laws have been violated.

## II. Argument

### A. Mississippi Conservatives Did NOT Receive an Improper Contribution from a Federally-Chartered Financial Institution, Nor Was the Loan Mississippi Conservatives Received from Trustmark National Bank Improperly Secured, Uncollateralized, or Otherwise Inappropriate Under the Act or FEC Regulations.

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The first and primary allegation raised against the Named Parties in both the original and supplemental Complaints is that Respondent MC received an improper and illegal contribution from TNB, a national bank. Specifically, Complainants assert that Respondents violated the provisions of 2 U.S.C. § 441(b) by accepting \$250,000 in funds from TNB via what they describe as an “unsecured, uncollateralized [loan]”. (See Original Complaint, pg. 4). According to the contents of both Complaints, the loan at issue was structured in such a way as to qualify as an illegal contribution under the Act because it did not meet the requirements set forth in various FEC regulations, including 11 C.F.R. § 100.82. In support of this point, Complainants allege that TNB’s loan was not “made in the ordinary course of business” and not “made on a basis that assures repayment” because it was not secured in accordance with the standards set forth in 11 C.F.R. § 100.82(e). Nothing could be further than the truth. Despite the claims and conspiracy theories presented by TPPCF and Ms. Martin, the loan at issue in the present matter was structured and executed in full compliance with the standards of FEC regulations, including those requiring the loan to be secured, collateralized, and disclosed to the Commission. Any assertion to the contrary is merely political banter designed to bring discredit to MC and its activities in support of Senator Cochran. Nevertheless, Respondents will address and rebut the charges leveled against them in both Complaints so as to confirm for the Commission that the activities of MC were in full compliance with federal campaign finance law and associated FEC regulations. Upon review of the forthcoming facts and arguments, it should be readily apparent

to the Commission that there is no legal or factual basis to suspect that Respondents accepted an illegal contribution from a national bank or failed to structure the loan to MC in a manner that was compliant with federal law.

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accordance with applicable banking laws and regulations and is made in the ordinary course of business. For the purposes of this standard, a loan is deemed to be made in the ordinary course of business if it: (1) bears the usual and customary interest rate of the lending institution for the category of loan involved; (2) is made on a basis that assures repayment; (3) is evidenced by a written instrument; and (4) is subject to a due date or amortization schedule. 11 C.F.R. § 100.82(a)(1)-(4). Most of these requirements are fairly self-explanatory and straight forward. The obligation for a bank loan to be "made on a basis that assures repayment" is described in greater detail, however, in 11 C.F.R. § 100.82(e).

In that regulatory provision, the FEC declares that a loan (or line of credit) shall be considered made on a basis that assures repayment if it was obtained using one of two methods, or a combination of such methods. Under the first method, the loan may be secured using collateral, such as real estate, personal property, goods, negotiable instruments, certificates of deposit, chattel papers, stocks, accounts receivable, or cash on deposit. *See* 11 C.F.R. § 100.82(e)(1)(i). In such a setting, the lending institution making the loan must have a perfected security interest in the collateral supplied and the fair market value of such collateral must be equal to or greater than the loan amount. *Id.* Under the second method, the loan may be secured using a written agreement whereby the political committee receiving the loan has pledged future receipts to the lending institution. *See* 11 C.F.R. § 100.82(e)(2). In such a setting, the following must be true: (a) the amount of the loan or loans obtained may not exceed the amount of pledged funds; (b) the loan amounts received must be based on a reasonable expectation of the receipt of pledged funds (as documented by cash flow charts or financial plans provided by the political committee to the lending institution); (c) a separate depository account must be established at the lending institution or the lender must obtain an assignment from the political committee to access

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funds in a committee account at another depository institution; and (d) the loan agreement must require the deposit of contributions and interest income pledged as collateral into the separate depository account for the purpose of retiring debt according to the repayment requirements of the loan agreement. 11 C.F.R. § 100.82(e)(2)(i)-(iv). In satisfying the regulatory requirements set forth above, a political committee may also use a combination of the two described methods or some other reasonable method to ensure repayment. If some other method is used, the Commission will "consider the totality of the circumstances on a case-by-case basis to determine whether the loan was made on a basis that assures repayment." 11 C.F.R. § 100.82(e)(3).

Despite the bombastic rhetoric and baseless accusations employed by Complainants in both the original and supplemental Complaints, the facts clearly establish that the loan agreement entered into by MC and TNB satisfied each of the regulatory requirements set forth in 11 C.F.R. §§ 100.82(a) and 100.82(e). As such, there is absolutely no basis for the Commission to believe that an improper contribution was made by TNB to MC in violation of 2 U.S.C. § 441(b) and 11 C.F.R. § 114.2. First and foremost, as required by 11 C.F.R. § 100.82(a), the loan at issue in this matter was made in "the ordinary course of business" and in accordance with both applicable banking laws and regulations (at the federal and state levels). The loan documents provided to the FEC in MC's April 30, 2014 Miscellaneous disclosure make this abundantly clear. Through that submission, MC provided the Commission (and the public at large) with detailed information regarding the nature of the bank loan between TNB and the committee. Included among the reported data were the promissory note entered into between TNB and MC (attached hereto as EXHIBIT #2), the corporate resolution to borrow/grant collateral executed by MC and Mr. Perry (attached hereto as EXHIBIT #3), and the errors and omissions agreement by and between TNB and MC (attached hereto as EXHIBIT #4). Each of these documents clearly

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establish that the loan was made via a legitimate, arms-length transaction that satisfied the requirements of federal and Mississippi state law applicable to the lender and borrower, including all legal requirements obligating a bank loan arrangement to address such substantive matters as: payment terms; interest calculation; prepayment; late fees; default; interest after default; changes in ownership; insolvency; rights of setoff; collateral; successor interests; attorneys' fees and expenses; the correction of clerical errors; and other similar subjects. Moreover, each of the financial documents provided to the FEC confirm that there was nothing at all "extraordinary" or "unordinary" about the loan agreement between TNB and MC. The loan was, in both the common and regulatory sense of the phrase, "made in the ordinary course of business."

Examining the terms of the loan agreement between TNB and MC, as set forth in the documents provided to the FEC in the committee's April 30, 2014 Miscellaneous filing, it is abundantly clear that each of the distinct regulatory requirements of 11 C.F.R. § 100.82(a)(1)-(4) are met. For example, the promissory note provided to the Commission plainly reveals that TNB charged an annual percentage rate of 2.86%<sup>3</sup> on its loan of \$250,000 to MC. This rate of interest was also reflected on MC's other public disclosures with the FEC in April and May 2014.<sup>4</sup> A rate of interest such as the one charged by TNB in association with the present loan is usual and customary for loans of the particular size and category entered into by MC. As such, no reasonable case can be made by Complainants that TNB's loan with MC in any way failed to meet the regulatory requirements of 11 C.F.R. § 100.82(a)(1), which mandate that a bank loan

<sup>3</sup> Under the terms of the loan agreement between TNB and MC, this basic rate of interest could change in the case of default. Likewise, MC could incur a "late charge" of 4.080% on the unpaid portion of the regularly scheduled payment or \$5.00 (whichever is greater) for payments made 16 days or more late.

<sup>4</sup> See, e.g., the following: MC's 2014 First Quarter FEC disclosure (filed April 15, 2014); MC's First Amended 2014 First Quarter FEC disclosure (filed May 12, 2014); and MC's Second Amended 2014 First Quarter FEC disclosure (filed May 17, 2014).

“bear[] the usual and customary interest rate of the lending institution for the category of loan involved.” In fact, the Complaints submitted to the Commission in the present matter by TPPCF and Ms. Martin do not even attempt to contest this point.

Along the same lines, Complainants can offer no compelling reason for the Commission to question whether TNB’s loan to MC in any way fails to meet the regulatory requirements set forth in 11 C.F.R. §§ 100.82(a)(3)-(4). The documentation provided to the FEC in conjunction with MC’s disclosure of the TNB loan makes it abundantly clear that the obligation at issue in the present review is “evidenced by a written instrument” and “subject to a due date or amortization schedule.” The terms of the loan agreement at issue were plainly memorialized in the promissory note provided to the Commission in MC’s April 30, 2014 Miscellaneous disclosure. In spelling out the specific terms of the loan, the disclosed promissory note clearly establishes a maturity date of June 3, 2014 for the obligation and asserts that “[b]orrower will pay this loan in one principal payment of \$250,150.00 plus interest on June 3, 2014.” (EXHIBIT #2, pg. 1). Based upon these facts, Complainants have no ability whatsoever to question the permissibility of the TNB loan under 11 C.F.R. §§ 100.82(a)(3)-(4). The contents of the Complaints bear this out, as TPPCF and Ms. Martin make no claims challenging the existence of a written instrument memorializing the TNB loan or specifying its due date.

Given the above facts, Complainants entire challenge to the legitimacy of the TNB loan rests on the contention that the obligation fails to meet the regulatory requirements of 11 C.F.R. § 100.82(a)(2). As discussed in greater detail above, 11 C.F.R. § 100.82(a)(2) requires a bank loan entered into with a nonconnected political committee to be “made on a basis which assures repayment.” To qualify as a basis that assures repayment, a loan must be structured using one of the methods described in 11 C.F.R. §§ 100.82(e)(1) or 100.82(e)(2), a combination of the

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methods described in those regulatory sections, or in some other reasonable fashion that ensures reimbursement of the loan. See 11 C.F.R. §§ 100.82(e)(3). Complainants argue that the TNB's loan to MC fails to meet any of these requirements because there was no "collateral to support the loan" and "no perfected security interest in any collateral." (See Original Complaint, pg. 4). Such statements are wholly inaccurate when it comes to describing the nature of the TNB loan, and only go to show the lengths to which TPPCF and Ms. Martin will stoop to attack those supporting Senator Cochran and opposing State Senator McDaniel.

As should be readily clear from the contents of the promissory note, corporate resolution to borrow/grant collateral, and errors and omissions agreement associated with the TNB loan, the obligation at issue in the present matter was structured in a manner wholly consistent with the requirements of 11 C.F.R. § 100.82(e)(1). Specifically, the TNB loan to MC was secured with collateral (a certificate of deposit), which held a total value equal to or greater than the value of the \$250,000 loan. The existence of this certificate of deposit as collateral was clearly established in the promissory note by and between TNB and MC, as well as in the Second Amended 2014 First Quarter FEC disclosure submitted to the Commission on May 17, 2014. (See EXHIBIT #2, pg. 1). Likewise, as required by regulation, TNB's security interest in the collateral was fully perfected in accordance with the requirements of Mississippi law. Under Mississippi state law, a security interest in a certificate of deposit (deposit account) collateralizing a loan is perfected by *control* over the actual collateral in accordance with the requirements of Mississippi Code § 75-9-314, not by filing a UCC-1.<sup>5</sup> This is typically

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<sup>5</sup> Complainants contend that TNB's security interest in the certificate of deposit (deposit account) collateralizing the loan to MC cannot be "perfected" until such time as the bank files a UCC-1 form with the State of Mississippi. See Supplemental Complaint, pg. 4 and 8. This represents a fundamental misunderstanding of the law of secured transactions in Mississippi. Security interests in certificates of deposit and deposit accounts, in accordance with the demands of M.C. §§ 75-9-312 and 75-9-314, may only be perfected by control over the actual collateral at issue.

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established by execution of an Account Control Agreement ("ACA") or Assignment of Deposit Account ("ADA") that sets forth rights to and control over the funds maintained in the certificate of deposit (deposit account) that is pledged as collateral. For as long as the ACA or ADA is in effect, the lender will have a perfected security interest in the pledged certificate of deposit (deposit account). In the present matter, it is readily apparent that TNB obtained control over the collateral securing the loan through an ADA. (See EXHIBIT #2, pg. 1). As such, TNB held a perfected security interest in the certificate of deposit (deposit account) securing the loan at issue in the present matter dated from the loan's actual date of issuance.

In light of the above facts, it makes little sense for the Complainants to argue that the loan agreement between TNB and MC somehow ran afoul of the regulatory requirements of 11 C.F.R. § 100.82(e). Despite claims about unfiled UCC-1 forms and unperfected security interests (lodged by TPPCF and Ms. Martin), the available evidence firmly establishes that TNB held control (and therefore a perfected security interest) over the certificate of deposit collateralizing the MC loan. Given that fact and the established value of the certificate of deposit at issue, there is absolutely no reason for the Commission to believe that TNB and MC entered into a loan that failed to meet the regulatory obligations set forth in 11 C.F.R. § 100.82(e)(1) or otherwise failed to assure repayment. In turn, and based upon the uncontroverted evidence presented herein, there is no subsequent justification for the Complainants' assertion that TNB's loan to MC was impermissible or non-compliant with the requirements of 11 C.F.R. § 100.82(a). The simple truth is that the loan at issue in this dispute squarely met each of the regulatory requirements of 11 C.F.R. § 100.82 and was both legal and acceptable under the Act. As such, any contention that the TNB loan to MC was somehow an illegal or improper contribution should be dismissed as patently incorrect and devoid of evidentiary foundation. To this point,

the Commission should consider Complainant's initial allegation wholly meritless, moot, and cause it to be summarily dismissed without further investigation.

**B. Mississippi Conservative's Loan from Trustmark National Bank Did NOT Have Any Personal Guarantors or Endorsers, and Therefore the Committee Did NOT Violate the Act or FEC Regulations by Failing to Disclose the Provider of the Certificate-of-Deposit Securing the Loan.**

The second discernible allegation raised by the Complainants in their original and supplemental Complaints against the Named Parties centers on the notion that Respondents violated the Act and its associated regulations by failing to disclose the identity of the person who provided the certificate of deposit securing the loan between TNB and MC. Specifically, Complainants assert that Respondents failed to meet their regulatory obligations under 11 C.F.R. § 104.3(a)(4)(iv) and 11 C.F.R. § 100.82(c) by refusing to characterize the provider of the TNB loan collateral as a guarantor on MC's FEC disclosure reports, and likewise by failing to treat the guarantee itself as a contribution under the Act. (*See Supplemental Complaint, pg. 6-7*). According to the claims advanced by TPPCF and Ms. Martin in the Complaints, federal campaign finance law compels the Named Parties to treat "the owner of a certificate of deposit pledged as collateral" for a loan as a guarantor whose identity must be disclosed in compliance with FEC rules and regulations. (*See Supplemental Complaint, pg. 5*). Such pronouncements, although clothed in legalistic rhetoric, are wholly without merit. Nothing in federal campaign finance law or the contents of either the original or supplemental Complaints provide a reasonable basis upon which to assert that the provider of a certificate of deposit collateralizing a loan is automatically a guarantor or endorser of that loan. This is simply a legal fiction created by the Complainants to help advance their politically-motivated agenda. In turn, and upon review of the facts and arguments presented below, it should therefore be readily apparent to the

Commission that TNB's loan to MC had no guarantors or endorsers, and that MC faced no associated guarantor or endorser disclosure obligations under the Act.

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The legal provisions at the heart of the present allegation are three separate FEC rules dealing with the treatment of guarantors or endorsers of loans to political committees. The first of those provisions, 11 C.F.R. § 104.3(a)(4)(iv), deals with the public disclosure of loan guarantors and obligors. Under the terms of this Commission regulation, a political committee receiving a permissible loan from a financial institution or any other source is required to disclose "each person whom makes [the] loan ... together with the identification of any endorser or guarantor of such loan, the date such loan was made and the amount or value of such loan." A committee must satisfy this obligation by filing a Schedule C-1 attachment in conjunction with the first periodic FEC report due after the new loan or line of credit is established. *See* 11 C.F.R. § 104.3(d)(1). The contents of this schedule collectively require a committee to report a wide variety of information regarding the nature of the loan or line of credit at issue, including the name, mailing address, employer and occupation of all guarantors and obligors, and the "amount guaranteed outstanding" for such guarantors or obligors. Any time the data provided on a Schedule C-1 changes following its initial filing, an amended schedule must also be submitted with the next periodic report.

The second and third FEC regulations at issue in the present allegation are 11 C.F.R. § 100.52(b) and § 100.82(c), which govern the treatment of endorsements or guarantees under campaign contribution rules. Under 11 C.F.R. § 100.52(b) and 11 C.F.R. 100.82(c), an endorsement or guarantee of a loan is treated as a contribution under the Act. The value of such contribution, which is subject to public disclosure under 11 C.F.R. §104.3(a) and other FEC regulations, is defined to be equal to the total amount of the loan for which the endorser or



guarantor is liable. This amount is considered to count against the endorser's or the guarantor's federal contribution limits only to the extent that the loan remains outstanding. In turn, the amount charged against an endorser's or guarantor's individual donation limit can be proportionally reduced via repayment of the endorsed or guaranteed loan.

Based upon a misguided understanding of the nature of the loan agreement between TNB and MC, Complainants seem to believe that the Named Parties have run afoul of all of the above FEC regulations. Specifically, Complainants contend that Respondents violated 11 C.F.R. § 104.3(a)(4)(iv) by not disclosing the provider of the certificate of deposit (deposit account) collateralizing the TNB loan as a "guarantor" or "endorser" for the loan. Likewise, TPPCF and Ms. Martin assert that the Named Parties violated 11 C.F.R. § 100.52(b) and § 100.82(c) by not treating the value of the certificate of deposit collateralizing the TNB loan as a guarantor or endorser contribution under the Act. Such allegations by the Complainants are wholly unsupported by the evidence and based on a fundamentally false presumption – the notion that a deposit account collateralizing a loan somehow transforms the provider of such account into a loan guarantor or endorser. Nothing could be further from the truth.

Collateralization, guaranty and endorsement are entirely separate and unique means for a lending institution to protect its financial interests in a loan setting. Collateralization allows a lender to "secure" its loan to a particular borrower using tangible assets. Guaranty and endorsement protect the monetary interests of a lending institution in an entirely different manner, however – by creating independent agreements by and between lenders, borrowers and third parties whereby third parties promise to assume the financial responsibilities of the primary borrower upon default. Given these facts, it is misguided to conflate the act of collateralizing a loan with the decision to become an obligor or endorser. In much the same way, it is erroneous

to assert that the provision of a certificate of deposit or deposit account as collateral for a loan or line of credit in any way transforms the source of that collateral into a guarantor or endorser of the loan. This point is clear upon a basic examination of the legal terms "guarantor" and "endorser", and upon consideration of the language of the Act, FEC regulations, and other administrative guidance.

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In common legal terms, a "guarantor" is defined to mean a person who makes a guaranty or "a promise to answer for the payment of debt or performance of obligation if [the] person liable in the first instance fails to make payment or perform obligation."<sup>6</sup> Thus, in order to qualify as the legal guarantor of a loan, an individual must provide a lender with an affirmative pledge to assume responsibility for the obligations or debts of the borrower if he, she or it goes into default. This promise is typically put into place through an independent guaranty agreement executed by and between the lending institution, borrower, and guarantor.<sup>7</sup> Even in the absence of such a written guarantee covenant, however, an individual cannot become a guarantor without some express agreement among the parties for someone to secondarily assume the financial responsibilities of the borrower and full terms of the loan in case of default.<sup>8</sup> Merely aiding in the collection of collateral to secure a loan will not obligate an individual to assume the responsibilities and terms of the borrower. For example, providing assistance with the

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<sup>6</sup> See Black's Law Dictionary, Abridged 6<sup>th</sup> Edition, definitions of the terms "guarantor" and "guaranty", pg. 487.

<sup>7</sup> Guaranty agreements are typically included as addenda to primary loan documents and normally memorialized in specific guaranty clauses within promissory notes.

<sup>8</sup> On pg. 6 of the supplemental Complaint, TPPCF and Ms. Martin wrongly contend that the provider of a certificate of deposit for the collateralization of a loan must, by definition, be a "guarantor" because the funds associated with the deposit account provide the lender with security in case of default. Such an argument reflects the degree to which the Complainants fail to understand the term "guarantor". In order to qualify as a guarantor of a loan, an individual or entity must become secondarily liable for all of the financial responsibilities of the borrower in case of default and become subject to the full obligations of the loan agreement itself. Such secondary liability clearly did not occur in this case.

collateralization of a loan simply will not trigger legal responsibility for default payments, late charges, attorneys' fees, expenses or other costs set forth in the loan agreement. As such, providing collateral to help secure a loan is in no way the same as becoming a guarantor of the loan itself, which requires express memorialization of secondary responsibility for the full financial obligations facing the borrower under the terms of the applicable promissory note.

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In the context of a loan agreement, the term "endorser" is defined to mean a person who endorses or who, in writing, affirmatively accepts the primary liability associated with the repayment of a financial obligation.<sup>9</sup> Thus, in order to qualify as the legal endorser of a loan, an individual must provide a lender with an affirmative pledge to assume primary responsibility for the obligations or debts of the borrower. In most settings, this promise is put into place through a formal co-signer agreement or an independent written endorsement document executed by and between the lending institution, borrower, and endorser. Even in the absence of such an official covenant, however, an individual cannot become an endorser of a loan without some express written confirmation of a desire to assume the primary loan obligations of the borrower. Merely aiding in the collection of collateral to secure a loan will in no way compel an individual to assume the principal responsibilities of the borrower or shoulder the basic terms of the loan. As such, providing collateral to help secure a loan is in no way the same as becoming an endorser of the loan itself.

Despite Complainants' best efforts to twist the language of Merriam-Webster and Black's Law Dictionary (*see* Supplemental Complaint, pg. 9) to meet their needs, the terms "guarantor" and "endorser" simply do not apply in the present matter. The provider of the certificate of deposit (deposit account) collateralizing the TNB loan to MC undertook no action in the present

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<sup>9</sup> See Black's Law Dictionary, Abridged 6<sup>th</sup> Edition, definition of the terms "endorser" and "endorse", pg. 533-534.

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matter to qualify as either a "guarantor" or "endorser" of the \$250,150 obligation. As is clear from the nature of the loan documentation provided by MC in its 2014 Miscellaneous FEC disclosure filing, the provider of the certificate of deposit entered into no agreement and made no affirmative pledge to assume secondary responsibility for the obligations of MC should it have gone into default on the loan. Without evidence of such a formal guaranty agreement between TNB, MC and the provider, and without any other proof of an express arrangement between the parties as to secondary responsibility for MC's loan, Complainants have no reasonable basis upon which to claim that a "guarantor" existed as to the obligation at issue. In much the same way, TPPCF and Ms. Martin have no justifiable foundation for asserting that the provider of the collateral for the TNB loan somehow qualifies as an "endorser" of that obligation. The contents of the original and supplemental Complaints provide absolutely no evidence establishing that the provider of the certificate of deposit at issue in this matter either co-signed MC's loan or entered into some other written endorsement agreement assuming primary responsibility for MC's financial obligations under the loan. Complainants offer no proof as to these points because no such evidence exists. The loan agreement entered into between TNB and MC contained absolutely no endorsement provisions. Likewise, neither the bank nor the committee asked the provider of the certificate of deposit (or any other third party) to in any way endorse the loan at issue. These points are substantiated by the contents of the loan documentation in the possession of the FEC with regard to the obligation at issue.

In light of the above facts, the Commission should not have any doubt as to the hollow nature of the Complainants' second discernible allegation. Since it is abundantly clear that the loan agreement executed between TNB and MC had no secondarily-liable "guarantors" and no primarily-liable "endorsers", there is absolutely no basis for the FEC to believe that the Named

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Parties somehow failed to meet their regulatory obligations under 11 C.F.R. § 104.3(a)(4)(iv), 11 C.F.R. § 100.52(b), or 11 C.F.R. § 100.82(c). Due to the fact that no "guarantor" or "endorser" existed in connection with the TNB loan, MC and Mr. Perry had no legal responsibility to identify any guarantors or endorser under 11 C.F.R. § 104.3(a)(4)(iv). Likewise, since no "guarantee" or "endorsement" took place in association with TNB's loan to MC, the Respondents had no guarantee or endorsement amount to report as a contribution in accordance with 11 C.F.R. § 100.52(b) and 11 C.F.R. § 100.82(c). Given these determinations, it is clear that Complainants have failed to present a cognizable allegation upon which relief can be granted and likewise failed to identify any reasonable basis for additional Commission investigation. As such, the FEC should disregard the second claim raised by TPPCF and Ms. Martin, and subsequently cause it to be dismissed without further consideration.

C. Mississippi Conservatives Did NOT Deliberately File False or Inaccurate Disclosure Reports with the FEC in Order to Obscure the Nature of the Loan Agreement Entered into Between the Committee and Trustmark National Bank.

The third discernible allegation raised by the Complainants in their original and supplemental Complaints relates to the Named Parties' preparation and submission of FEC disclosure reports. Specifically, Complainants accuse Respondents of "deliberately fil[ing] four false FEC reports" for MC and otherwise "fail[ing] to file ... accurate FEC report[s]" regarding the committee's activities. (See Supplemental Complaint, pg. 7). To this point, the Complaints reference the following FEC disclosures as containing false information – MC's original 2014 First Quarter FEC disclosure (filed on April 15, 2014); MC's Miscellaneous disclosure report (submitted on April 30, 2014); MC's First Amended 2014 First Quarter FEC disclosure (filed on

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May 12, 2014); and MC's Second Amended 2014 First Quarter FEC disclosure<sup>10</sup> (submitted on May 17, 2014). (See Supplemental Complaint, pg. 7-9). In regard to the first three of these disclosure reports, TPPCF and Ms. Martin accuse the Named Parties of purposefully providing false information concerning the nature of the loan from MC to TNB, including whether or not it was secured by collateral (and the total value of such collateral), and whether or not there were any guarantors or endorsers for the loan. (See Supplemental Complaint, pg. 7-9). The Complainants also allege that the fourth of the listed reports contains false and misleading information due to the fact that it described TNB's security interest in the loan it made to MC as "perfected" when no UCC-1 form was filed in conjunction with the loan. These claims, while fully aligned with Complainants' overall political attack on MC and its activities, are simply inaccurate. Respondents never deliberately or knowingly divulged any erroneous information in MC's periodic FEC filings, and always utilized "best efforts" to ensure proper reporting and the correction of any technical defects in disclosure. As such, and as the facts below clearly display, the Named Parties undertook all reasonable care to meet their full compliance obligations under 11 C.F.R. §§§ 102.2, 104.14(a), and 104.14(d) to provide both the public and the FEC with complete, timely and accurate periodic disclosure reports.

The core of Complainants' allegations regarding the filing of false FEC disclosure reports centers on the information provided by the Named Parties on the Schedule C-1 addenda explaining the nature of the TNB loan to MC. In the committee's original 2014 First Quarter disclosure report, 2014 Miscellaneous filing, and First Amended 2014 First Quarter disclosure

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<sup>10</sup> Throughout the contents of the Supplemental Complaint, Complainants use a number of inaccurate monikers to refer to MC's May 17, 2014 FEC. For example, they reference it as the "Third Amended April Quarterly FEC Report" and the "May 18, 2014" report. As the FEC record-keeping system clearly shows, neither label is accurate. The May 17, 2014 report filed by MC was filed on that date and was the committee's second amended disclosure report for the first quarter of the present calendar year.

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report, Complainants take issue with MC's nondisclosure of guarantors or endorsers associated with the TNB loan and the fact that the committee failed to report that the loan was secured by a certificate of deposit worth \$250,000. (See Supplemental Complaint, pg. 8). The first of these issues was discussed at length previously in this Response. As set forth above, the loan at issue in the present matter did not have any "guarantors" or "endorsers" who were secondarily or primarily liable for the loan obligations and responsibilities of MC. As such, there was no regulatory obligation under 11 C.F.R. § 104.3(a)(4)(iv), 11 C.F.R. § 100.52(b), or 11 C.F.R. § 100.82(c) for the committee to report the identity of such guarantors or endorsers on the Schedule C-1s submitted on April 15, 2014, April 30, 2014, and May 12, 2014. Much the same can be said for the Schedule C-1 addendum associated with the May 17, 2014 disclosure report. The omission of any "guarantor" or "endorser" data on all of those reports was wholly accurate and in line with the requirements of the Act and FEC regulations. In turn, there is no reason for the Commission to believe that the Named Parties submitted false or inaccurate information – deliberately, unintentionally or otherwise – regarding the guarantee or endorsement of the TNB loan in any of their FEC reports. The second of the issues raised by Complainants with regard to the April 14, 2014, April 30, 2014, and May 12, 2014 FEC disclosure reports does bear further consideration, however.

As pointed out by TPPCF and Ms. Martin in their supplemental Complaint filed on May 19, 2014, the Schedule C-1s filed by the Named Parties in connection with their 2014 First Quarter disclosure report, 2014 Miscellaneous submission, and First Amended 2014 First Quarter disclosure report lacked any indication that the TNB loan was secured by tangible assets. (See Supplemental Complaint, pg. 8). Additionally, those filings appear to have lacked a descriptive narrative identifying those collateralizing assets and their value. Such omissions by

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MC were nothing more than inadvertent oversights on the part of the committee, which were subsequently corrected on the Second Amended 2014 First Quarter disclosure submission filed on May 17, 2014. These technical defects in the April 14, 2014, April 30, 2014, and May 12, 2014 submissions by MC were the unintentional result of human error by committee staff when preparing those disclosures. When organizing and drafting the initial 2014 First Quarter disclosure report in the FECFile system, MC staff accidentally checked the "NO" operational box when completing the steps associated with the Schedule C-1 describing whether TNB loan was secured by collateral. As a result of this minor error, the MC staff were not asked to provide a narrative description of the collateralizing assets or an explanation of their value. Such dialog boxes only appear if the "YES" operational box is checked by the computer operator. Unfortunately, despite the best efforts of Mr. Perry and other MC staff, this error was not identified before filing, and no information regarding the nature of the \$250,000 certificate of deposit collateralizing the TNB loan to MC was included on the April 14, 2014 report.

Due to the saving of previous data in the FECFile system, this same defect was unfortunately carried over to the Schedule C-1 forms associated with MC's 2014 Miscellaneous disclosure report and First Amended 2014 First Quarter submission filed on April 30, 2014 and May 12, 2014. These reports, although reviewed for accuracy and completeness by Mr. Perry and MC staff (utilizing all available efforts and resources), were regrettably not flagged as potentially erroneous. It was not until after MC's May 12, 2014 report was submitted that it was brought to the attention of the committee that there may have been an unintentional omission of collateral data on the Schedule C-1s associated with the previous three FEC disclosures. As explained at length above, that singular defect was in no way deliberate or intentional. In spite of the ill intents assigned by the Complainants to the Named Parties' handling of this reporting



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error, the mistake was purely one of oversight and not one of deliberation. This contention is supported by all of the activities undertaken by MC with respect to the TNB loan agreement, particularly those associated with the collateralization of the agreement. At no point in time after entering into that agreement did MC ever seek to obscure or hide from the Commission or public information regarding the nature of its loan agreement with TNB. In fact, as required by the Act, Respondents publicly disclosed the promissory note, corporate resolution to borrow/grant collateral, and errors and omissions agreement by and between TNB and MC. These materials clearly revealed the existence of the \$250,000 deposit account (certificate of deposit) collateralizing the loan, so there is absolutely no reason to believe that the Named Parties deliberately or intentionally checked the "NO" box on the discussed Schedule C-1s. (See EXHIBIT #2, EXHIBIT #3 and EXHIBIT #4). To assert otherwise, as TPPCF and Ms. Martin do in their supplemental Complaint, is simply false and uncorroborated by the facts. Therefore, when assessing the validity of the present allegation, the Commission should recognize the Complainants' accusation for what it is – a blatant attempt by TPPCF and Ms. Martin to elevate what is an inadvertent technical disclosure defect into a deliberate "conspiracy" or "scheme" that is politically problematic for MC and Senator Cochran. The FEC should not reward such blatant media grandstanding on the part of the Complainants, and should refrain from taking any formal action against the Named Parties with respect to the described (and corrected) technical defects in past public disclosures.

In addition to the above "errors" or "omissions" in filing, Complainants also allege that the Named Parties deliberately failed to meet their FEC disclosure obligations when they reported that TNB had a "perfected security interest" in the collateral associated with the MC loan detailed in the Second Amended 2014 First Quarter disclosure report. This claim grows out

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of Complainants' previous arguments (discussed at length above) regarding the nature of the security interest in the certificate of deposit held as collateral by TNB for its loan to MC. TPPCF and Ms. Martin, as documented in great detail in this Response, believe that TNB's loan to MC was improper because TNB never perfected its security interest in the collateral by filing a UCC-1 submission with the State of Mississippi. As such, Complainants' believe it was false and erroneous for the Named Parties to disclose TNB's security interest as "perfected" when no such UCC-1 had been filed by the bank. Based upon the facts and analysis presented in this Response, there should be no doubt that this contention is wholly erroneous. Given the fact that TNB's security interest in the certificate of deposit (deposit account) was perfected through control in accordance with the requirements of Mississippi Code §§ 75-9-312 and 75-9-314, it was altogether accurate and appropriate for MC to describe the interest as perfected on its May 17, 2014 filing. In turn, there is no reason for the Commission to believe that the Named Parties submitted false or inaccurate information – deliberately, unintentionally or otherwise – regarding the status of TNB's security interest in the assets collateralizing the loan agreement with MC.

Given the above facts, it is abundantly clear that the third allegation included in the Original and Supplemental Complaints has no evidentiary foundation and provides no basis for further Commission investigation. Respondents gave their "best efforts" to comply with 11 C.F.R. §§§ 102.2, 104.14(a), and 104.14(d), and to provide both the public and the FEC with complete, timely and accurate periodic disclosure reports. To the extent minor errors or omissions existed in any of MC's submission to the FEC, such technical defects were wholly inadvertent and had no bearing on the ability of the Commission to understand the nature of the permissible loan agreement between TNB and MC. Furthermore, Respondents took immediate remedial action to self-correct such errors and omissions and to ensure that MC's public

disclosure reports were as accurate as humanly possible. In light of these facts, the Commission should consider Complainants' third discernible claim wholly meritless, moot, and cause it to be summarily dismissed without further investigation.

**D. Mississippi Conservatives Did NOT Conspire to Hatch and Implement an Unlawful Scheme Designed to Violate Federal Campaign Finance Law and Associated FEC Regulations.**

The fourth discernible allegation raised by the Complainants in their original and supplemental Complaints asserts that MC and its associated personnel coordinated with TNB and Mr. Walker to hatch and implement an unlawful scheme to violate federal campaign finance law and FEC regulations. Specifically, Complainants assert that MC and Mr. Perry "acted in concert" with TNB and Mr. Walker to "deliberately, knowingly, and willfully violate the prohibition against contributions by national banks to federal political committees" and to "hatch[] and implement[] ... [a] scheme [to commit] multiple violations of federal law." (See Supplemental Complaint, pg. 9). Although the Complaints fail to provide any evidentiary foundation for this particular assertion, Complainants are quick to characterize the Named Parties as conspirators, violators of law, perpetrators of illegal conduct, filers of false information, and other inflammatory terms designed to draw negative media attention to MC, and by proxy, Senator Cochran. Such labels, while politically expedient for TPPCF and Ms. Martin, are wholly devoid of any factual support or backing. In fact, such allegations border on the absurd and show the lengths to which the attention-hungry supporters of State Senator McDaniel are willing to go to assassinate the character of Senator Cochran and all who support him. The simple truth is that MC and Mr. Perry never engaged in conduct (independently or in conjunction with TNB or Mr. Walker) that could in any way be construed as attempting to hatch or implement a scheme to accept an illegal contribution or hide an improper loan from TNB, or

to otherwise violate the tenets of federal campaign finance law. As such, and upon consideration of the facts and arguments presented below, it should be clear to the Commission that the Named Parties are in full compliance with federal law, and that the final allegation raised by Complainants is wholly without merit.

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The crux of Complainants' fourth allegation against the named parties is based on the provisions of 2 U.S.C. § 437(g)(d)(1)(A). (See Supplemental Complaint, pg. 9). This section of the Act specifically provides that "any person who knowingly and willfully commits a violation of ... [FECA] which involves the making, receiving, or reporting of any contribution, donation, or expenditure – (i) aggregating \$25,000 or more during a calendar year shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both." To verify its legal applicability, Complainants would need to establish that their Complaints relate to contributions, donations or expenditures valued at \$25,000 or more, offer proof that a substantive violation of the Act took place, and present compelling evidence that Respondents *both knowingly and willfully* committed such violations. In the present matter, Complainants fall well short of meeting each of the elements of this multi-prong standard. In fact, the Complaints filed by TPPCF and Ms. Martin struggle to meet the baseline element of establishing that the accusations at issue involve contributions, donations or expenditures greater than \$25,000, let alone demonstrating the more exacting elements of the statutory provision – proving that clear violations of the Act took place and that the Named Parties had the requisite intent to commit such violations.

To put it simply, the Complaints submitted by TPPCF and Ms. Martin fail to provide the Commission with any justifiable basis to believe that Respondents violated or potentially violated 2 U.S.C. § 437(g)(d)(1)(A). First, Complainants' scattershot submission to the FEC

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offers no clear evidence that the allegations lodged against the named parties involve contributions, donations or expenditures in excess of \$25,000. Despite Complainants' best efforts to categorize the loan from TNB as an improper contribution or donation to MC, the facts and analysis provided in this Response clearly establish the erroneous nature of such an interpretation. The \$250,000 loan at issue in the present matter does not qualify as a contribution or donation under the Act and thus would not satisfy the baseline monetary element of the multi-prong test set forth in 2 U.S.C. § 437(g)(d)(1)(A). By comparison, the independent expenditures undertaken by MC in support of Senator Cochran and in opposition to State Senate McDaniel do have an aggregate value in excess of \$250,000, but it is not their appropriateness or the appropriateness of their disclosure that is at issue in the present Complaints. Rather, the Complainants are solely concerned with the nature of the TNB loan and its reporting by MC. As such, there is no evidence presented by either TPPCF or Ms. Martin to satisfy the contribution, donation or expenditure substantive prong of 2 U.S.C. § 437(g)(d)(1)(A).

In much the same way as the Complaints submitted by TPPCF and Ms. Martin fall short of meeting the requirements of the first prong of the 2 U.S.C. § 437(g)(d)(1)(A) standard, they likewise fail to provide any evidentiary support for the satisfaction of either of the statutory provision's key substantive elements – proof of clear campaign finance violations and proof of knowing and willful intent to commit such violations. The Complainants' inability to establish the first of these key substantive elements is well documented throughout this Response. Moreover, their failure to substantiate the second element is readily apparent from even a cursory review of the Complaints. Despite the charged rhetoric and accusatory tone utilized by the Complainants, they offer absolutely no evidence whatsoever regarding the intent of MC and Mr. Perry. Complainants simply provide no documentary or testimonial substantiation for their

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assertion that the Named Parties knowingly and willfully violated federal campaign finance law. Even worse, Complainants offer no reasonable basis for even lodging such accusations. They instead rely on groundless speculation and the innocuous fact that MC filed amendments to its FEC disclosure reports to justify making this final allegation. In doing so, Complainants are making a mockery of the complaint-submission system and transforming it from a respected part of the FEC's regulatory process to yet another cheap political and public relations tool.

The Commission should not reward the transparent political tactics of TPPCF and Ms. Martin by giving their fourth and final allegation any further consideration. Given the facts and analysis presented above, it should be abundantly clear that the Complainants have given no evidentiary basis for the Commission to believe a 2 U.S.C. § 437(g)(d)(1)(A) violation has occurred. Likewise, it should be readily apparent that Complainants have fallen well short of establishing any reasonable justification for pursuing further Commission investigation of this subject. The Complaints submitted provide absolutely no support for the assertion that Respondents acted in concert with TNB and its President to deliberately, knowingly and willfully hatch and implement an unlawful scheme to violate federal campaign finance law. Likewise, the explanation provided in the present Response clearly illustrates that MC's conduct with respect to TNB's institutional loan was in full compliance with the Act and its associated rules and regulations. In turn, the Commission should consider this claim wholly meritless and cause it to be summarily dismissed without further investigation.

### **III. Conclusion**

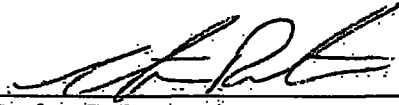
As the information contained within this Response clearly sets forth, Respondents have done nothing to run afoul of the legal requirements of federal campaign finance law. Despite this fact, however, Complainants seem comfortable making unsubstantiated allegations and

presenting ineffectual "evidence" against Respondents, presumably for the purpose of politically benefitting State Senator McDaniel during his heated primary campaign with Senator Cochran. As a result of these actions and the meritless nature of Complainants' claims, the Commission should summarily dismiss the Complaints against the Named Parties and find that there is no reason to believe that Respondents have violated the Act or its associated rules and regulations.

Moreover, the Commission should take additional steps to ensure that the FEC complaint process is not abused in a similar manner moving forward. As stated above, the allegations contained within the present Complaints, and verified under oath as being accurate by TPPCF and Ms. Martin, are inherently false and have no basis in either law or fact. The Complaint itself, it seems, is nothing more than a thinly-veiled political ploy on the part of TPPCF to undermine MC and those associated it, and to viciously attack any and all individual and entities wishing to challenge and speak the truth about the dangerous candidacy of State Senator McDaniel.

In light of this fact, Respondents hereby respectfully request an Order from the Commission obligating TPPCF and Ms. Martin to reimburse the Named Parties for the attorneys fees they incurred in responding to the present Complaint.

Respectfully Submitted,



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Stefan C. Passantino  
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*Designated Counsel for Mississippi Conservatives  
and Mr. Brian Perry, in his capacity as Treasurer  
of Mississippi Conservatives.*



14004444004

# EXHIBIT #1

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## TPPCF Files Complaint Against Pro-Cochran Super PAC and Trustmark Bank

Tea Party Patriots Citizens Fund (TPPCF) filed a complaint today with the Federal Election Commission (FEC) naming a pro-Thad Cochran Super PAC, the PAC's treasurer, Trustmark Bank and the bank president as respondents. The complaint says the respondents "willfully and knowingly" violated a federal law prohibiting the bank from making a contribution to a political committee.

TPPCF General Counsel Cieta Mitchell said, "This involves violation of federal campaign finance laws and blatant disregard for unambiguous FEC regulations. Banks are forbidden from making contributions to candidates or any federal campaign committee. Even powerful pro-establishment insiders are required to follow the law. Documents show that on January 31, 2014, the Super PAC made its first expenditure for attack ads against Chris McDaniel, in the amount of \$219,540. The problem was, that was almost \$90,000 more than the PAC had in the bank at the time. How did this happen?"

The scheme was revealed in pro-Cochran Mississippi Conservatives PAC's quarterly FEC filing on April 15: Trustmark President Harry Walker authorized – just two days before the anti-McDaniel ad buy – an unsecured, uncollateralized "loan" to the PAC. "If the PAC didn't have sufficient cash to secure the 'loan,' and didn't pledge future contributions and if the Bank took no security interest, then under federal law, it's not a loan at all," Mitchell said. "It becomes a contribution from a bank to a campaign committee, and that is a direct violation of federal law."

Significantly, Walker made a \$1,000 personal contribution to Thad Cochran's reelection campaign on the same day as the anti-McDaniel ad buy, and two days after authorizing the unlawful loan.

TPPCF Chairman Jenny Beth Martin also weighed in on the actions of Mississippi Conservatives PAC and Trustmark Bank, "This pro-Cochran PAC – funded by the wealthy Mississippi GOP elite – was so bent on attacking Chris McDaniel it willfully violated federal law. The anti-McDaniel ads were, without question, illegally funded. Now it's time for the FEC to do its job and hold these people accountable."

To read the full complaint filed with the FEC, [click here](#).

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"Ruling Class politicians from both political parties are fighting to keep the status quo in Washington. Tea Party supporters across America need to take a stand and fight back.

The 2014 elections are a referendum on Obamacare, out-of-control spending and big government. Help elect TRUE conservative reformers to Congress. Contribute to the Tea Party Patriots Citizens Fund today."

*Jenny Beth Martin  
Chairman, Tea Party Patriots  
Citizens Fund*

Running for office? Would like us to consider endorsing you?  
Please fill out our [Candidate Survey](#).

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PAID FOR BY TEA PARTY PATRIOTS CITIZENS FUND  
NOT AUTHORIZED BY ANY CANDIDATE OR CANDIDATE'S COMMITTEE  
[WWW.TEAPARTYPATRIOTSCITIZENSFUND.COM](http://WWW.TEAPARTYPATRIOTSCITIZENSFUND.COM)

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## PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No	Call Coll	Account	Officer	Initials
\$250,150.00	01-29-2014	06-03-2014	28743474-89847			R17	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item.  
Any item above containing "\*\*\*\*" has been omitted due to text length limitations.

**Borrower:** Mississippi Conservatives  
P.O. Box 2098  
Jackson, MS 39205

**Lender:** Trustmark National Bank  
Jackson Main Office  
216 E. Capitol Street, P.O. Box 201  
Jackson, MS 39208

Principal Amount: \$250,150.00

Date of Note: January 29, 2014

**PROMISE TO PAY.** Mississippi Conservatives ("Borrower") promises to pay to Trustmark National Bank ("Lender"), or order, in lawful money of the United States of America, the principal amount of Two Hundred Fifty Thousand One Hundred Fifty & 00/100 Dollars (\$250,150.00), together with interest on the unpaid principal balance from January 29, 2014, calculated as described in the "INTEREST CALCULATION METHOD" paragraph using an interest rate of 2.85% per annum based on a year of 360 days, until paid in full. The interest rate may change under the terms and conditions of the "INTEREST AFTER DEFAULT" paragraph.

**PAYMENT.** Borrower will pay this loan in one principal payment of \$250,150.00 plus interest on June 3, 2014. This payment due on June 3, 2014, will be for all principal and all accrued interest not yet paid. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; and then to any late charges. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

**INTEREST CALCULATION METHOD.** Interest on this Note is computed on a 306/360 basis; that is, by applying the (1) of the interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in this Note.

**PREPAYMENT.** Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Except for the foregoing, Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: Trustmark National Bank, Attn: Loan Operations, P.O. Box 1182 Jackson, MS 39205.

**LATE CHARGE.** If a payment is 16 days or more late, Borrower will be charged 4.000% of the unpaid portion of the regularly scheduled payment or \$5.00, whichever is greater.

**INTEREST AFTER DEFAULT.** Upon default, including failure to pay upon final maturity, the total sum due under this Note will continue to accrue interest at the interest rate under this Note.

**DEFAULT.** Each of the following shall constitute an event of default ("Event of Default") under this Note:

**Payment Default.** Borrower fails to make any payment when due under this Note.

**Other Defaults.** Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

**Default in Favor of Third Parties.** Borrower or any Grantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

**False Statements.** Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

**Insolvency.** The dissolution or termination of Borrower's business as a going business, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

**Creditor or Foreclosure Proceedings.** Commencement of foreclosure or foreclosure proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing this loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or foreclosure proceeding and if Borrower gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

**Events Affecting Guarantor.** Any of the preceding events occur with respect to any guarantor, endorser, surety, or accommodation party of any of the indebtedness or any guarantor, endorser, surety, or accommodation party dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note.

**Change in Ownership.** Any change in ownership of twenty-five percent (25%) or more of the common stock of Borrower.

**Adverse Change.** A material adverse change occurs in Borrower's financial condition or Lender believes the risk of payment or performance of this Note is impaired.

**Insolvency.** Lender in good faith believes itself insolvent.

**LENDER'S RIGHTS.** Upon default, Lender may declare the entire unpaid principal balance under this Note and all unpaid unpaid interest immediately due; and then Borrower will pay that amount.

**ATTORNEYS' FEES; EXPENSES.** Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay, or injunction), and costs. If not prohibited by applicable law, Borrower also will pay any court costs in addition to all other sums provided by law.

**JURY WAIVER.** Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

**GOVERNING LAW.** This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Mississippi without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of Mississippi.

**RIGHT OF SETOFF.** To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Roth accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or offset all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

**COLLATERAL.** Borrower acknowledges this Note is secured by the following collateral described in the security instrument listed herein: certificates of deposit described in an Assignment of Deposit Account dated January 29, 2014.

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**PROMISSORY NOTE**  
(Continued)

**FINANCIAL STATEMENTS.** The Borrower and/or Grantor agree to provide financial information as lender may require from time to time.

**SUCCESSOR INTERESTS.** The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

**NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES.** Borrower may notify Lender if Lender reports any inaccurate information about Borrower's account to a consumer reporting agency. Borrower's written notice describing the specific inaccuracy(ies) should be sent to Lender at the following address: **Tristram National Bank Attn: Credit Operations, P.O. Box 291 Jackson, MS 39208**

**GENERAL PROVISIONS.** If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forego enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waives presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral of impact, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

**PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE. BORROWER AGREES TO THE TERMS OF THE NOTE.**

**BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.**

**BORROWER:**

**MISSISSIPPI CONSERVATIVES**

By:   
Brian M. Poff, Executive Director of Mississippi  
Conservatives

**ATTEST:**

\_\_\_\_\_  
Secretary or Assistant Secretary

(Corporate Seal)

88052644001

## EXHIBIT #3



9250

**CORPORATE RESOLUTION TO BORROW / GRANT COLLATERAL**

Principal	Loan Date	Maturity	Loan No	Collateral	Account	Officer	Initials
250,150.00	01-29-2014	06-03-2014	28743474-69647			117	

References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "\*\*\*\*\*" has been omitted due to text length limitations.

**Corporation:** Mississippi Conservatives  
P.O. Box 2096  
Jackson, MS 39225

**Lender:** Trustmark National Bank  
Jackson Main Office  
248 E. Capitol Street, P O Box 281  
Jackson, MS 39205

**I, THE UNDERSIGNED, DO HEREBY CERTIFY THAT:**

**THE CORPORATION'S EXISTENCE.** The complete and correct name of the Corporation is Mississippi Conservatives ("Corporation"). The Corporation is a non-profit corporation which is, and at all times shall be, duly organized, validly existing, and in good standing under and by virtue of the laws of the State of Mississippi. The Corporation is duly authorized to transact business in all other states in which the Corporation is doing business, having obtained all necessary filings, governmental licenses and approvals for each state in which the Corporation is doing business. Specifically, the Corporation is, and at all times shall be, duly qualified as a foreign corporation in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. The Corporation has the full power and authority to own its properties and to transact the business in which it is presently engaged or presently proposes to engage. The Corporation maintains an office at 1125 Poplar Blvd, Jackson, MS 39202. Unless the Corporation has designated otherwise in writing, the principal office is the office at which the Corporation keeps its books and records. The Corporation will notify Lender prior to any change in the location of the Corporation's state of organization or any change in the Corporation's name. The Corporation shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to the Corporation and the Corporation's business activities.

**RESOLUTIONS ADOPTED.** At a meeting of the Directors of the Corporation, or if the Corporation is a close corporation having no Board of Directors then at a meeting of the Corporation's shareholders, duly called and held on \_\_\_\_\_ at which a quorum was present and voting, or by other duly authorized action in lieu of a meeting, the resolutions set forth in this Resolution were adopted.

**OFFICER.** The following named person is an officer of Mississippi Conservatives:

NAMES	TITLES	AUTHORIZED	ACTUAL SIGNATURES
Brian N. Perry	Executive Director	X	

**ACTIONS AUTHORIZED.** The authorized person listed above may enter into any agreements of any nature with Lender, and those agreements will bind the Corporation. Specifically, but without limitation, the authorized person is authorized, empowered, and directed to do the following for and on behalf of the Corporation:

**Borrow Money.** To borrow, as a cosigner or otherwise, from time to time from Lender, on such terms as may be agreed upon between the Corporation and Lender, such sum or sums of money as in his or her judgment should be borrowed, without limitation.

**Execute Notes.** To execute and deliver to Lender the promissory note or notes, or other evidence of the Corporation's credit accommodations, on Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of the Corporation's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancings, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

**Grant Security.** To mortgage, pledge, transfer, endorse, hypothecate, or otherwise encumber and deliver to Lender any property now or hereafter belonging to the Corporation or in which the Corporation now or hereafter may have an interest, including without limitation all of the Corporation's real property and all of the Corporation's personal property (tangible or intangible), as security for the payment of any loans or credit accommodations so obtained, any promissory notes so executed (including any amendments to or modifications, renewals, and extensions of such promissory notes), or any other or further indebtedness of the Corporation to Lender at any time owing, however the same may be evidenced. Such property may be mortgaged, pledged, transferred, endorsed, hypothecated or encumbered at the time such loans are obtained or such indebtedness is incurred, or at any other time or times, and may be either in addition to or in lieu of any property theretofore mortgaged, pledged, transferred, endorsed, hypothecated or encumbered.

**Execute Security Documents.** To execute and deliver to Lender the forms of mortgage, deed of trust, pledge agreement, hypothecation agreement, and other security agreements and financing statements which Lender may require and which shall evidence the terms and conditions under and pursuant to which such loans and encumbrances, or any of them, are given; and also to execute and deliver to Lender any other written instruments, any chattel paper, or any other collateral, of any kind or nature, which Lender may deem necessary or proper in connection with or pertaining to the giving of the loans and encumbrances.

**Negotiate Items.** To draw, endorse, and discount with Lender all drafts, trade acceptances, promissory notes, or other evidences of indebtedness payable to or belonging to the Corporation or in which the Corporation may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to the Corporation's account with Lender, or to cause such other disposition of the proceeds derived therefrom as he or she may deem advisable.

**Further Acts.** In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements, including agreements waiving the right to a trial by jury, as the officer may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

**ASSUMED BUSINESS NAMES.** The Corporation has filed or recorded all documents or filings required by law relating to all assumed business names used by the Corporation. Excluding the name of the Corporation, the following is a complete list of all assumed business names under which the Corporation does business: None.

**NOTICES TO LENDER.** The Corporation will promptly notify Lender in writing at Lender's address shown above for such other addresses as

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**CORPORATE RESOLUTION TO BORROW / GRANT COLLATERAL**  
**(Continued)**

Loan No: 28743474-89647

Page 2

Lender may designate from time to time) prior to any (A) change in the Corporation's name; (B) change in the Corporation's assumed business name(s); (C) change in the management of the Corporation; (D) change in the authorized signer(s); (E) change in the Corporation's principal office address; (F) change in the Corporation's state of organization; (G) conversion of the Corporation to a new or different type of business entity; or (H) change in any other aspect of the Corporation that directly or indirectly relates to any agreements between the Corporation and Lender. No change in the Corporation's name or state of organization will take effect until after Lender has received notice.

**CERTIFICATION CONCERNING OFFICERS AND RESOLUTIONS.** The officer named above is duly elected, appointed, or employed by or for the Corporation, as the case may be, and occupies the position set opposite his or her respective name. This Resolution now stands of record on the books of the Corporation, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

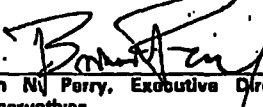
**NO CORPORATE SEAL.** The Corporation has no corporate seal, and therefore, no seal is affixed to this Resolution.

**CONTINUING VALIDITY.** Any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of the Corporation's agreements or commitments in effect at the time notice is given.

**IN TESTIMONY WHEREOF,** I have hereunto set my hand and attest that the signature set opposite this name listed above is his or her genuine signature.

I have read all the provisions of this Resolution, and I personally and on behalf of the Corporation certify that all statements and representations made in this Resolution are true and correct. This Corporate Resolution to Borrow / Grant Collateral is dated January 29, 2014.

**CERTIFIED TO AND ATTESTED BY:**

x   
Brian N. Perry, Executive Director of Mississippi  
Conservatives

**NOTE:** If the officer signing this Resolution is designated by the foregoing document as one of the officers authorized to act on the Corporation's behalf, it is advisable to have this Resolution signed by at least one non-authorized officer of the Corporation.

14031232192

## **EXHIBIT #4**

## ERRORS AND OMISSIONS AGREEMENT

Principal	Loan Date	Maturity	Loan No	Cal Co	Account	Officer	Initials
\$250,150.00	01-29-2014	06-03-2014	28743474-69847			117	
References in the boxes above are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

**Borrower:** Mississippi Conservatives  
P.O. Box 2098  
Jackson, MS 39225

**Lender:** Trustmark National Bank  
Jackson Main Office  
248 E. Capitol Street, P O Box 291  
Jackson, MS 39205

**LOAN NO.:** 28743474-69847

The undersigned Borrower for and in consideration of the above-referenced Lender funding the closing of this loan agrees, if requested by Lender or Closing Agent for Lender, to fully cooperate and adjust for clerical errors, any or all loan closing documentation if deemed necessary or desirable in the reasonable discretion of Lender to enable Lender to sell, convey, seek guaranty or market said loan to any entity, including but not limited to an investor, Federal National Mortgage Association, Federal Home Loan Mortgage Corporation, Government National Mortgage Association, Federal Housing Authority or the Department of Veterans Affairs.

The undersigned Borrower does hereby so agree and covenant in order to assure that this loan documentation executed this date will conform and be acceptable in the marketplace in the instance of transfer, sale or conveyance by Lender of its interest in and to said loan documentation.

DATED effective this January 29, 2014

**BORROWER:**

**MISSISSIPPI CONSERVATIVES**

By:   
Brian N. Perry, Executive Director of Mississippi  
Conservatives

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

X \_\_\_\_\_  
(Notary Public)

My Commission Expires: \_\_\_\_\_